



POLICE DEPARTMENT

September 20, 2022

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In the Matter of the Charges and Specifications :
- against - :

Lieutenant Richard Torres :
Tax Registry No. 919786 :
103rd Precinct :

Case No. 2020-22788

Police Officer Domenick Lagomarsine :
Tax Registry No. 943457 :
103rd Precinct :
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Case No. 2020-22790

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: David Green, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For Respondent Torres: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

For Respondent Lagomarsine: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Case No. 2020-22788

1. Said Lieutenant Richard Torres, while on duty and assigned as the 103rd Precinct Second Platoon Desk Officer, on or about June 22, 2020, having interviewed Jennifer Espinal and George Comejo about their father allegedly having been assaulted and hospitalized due to his injuries on June 20, 2020 within the confines of the 103rd Precinct, wrongfully failed to (1) conduct or direct the conducting of a Department investigation of said alleged crime, and instead told [the victim's daughter] to gather evidence of said alleged crime and report back to the 103rd Precinct with said evidence; (2) make required notifications to other Members of the Service assigned to the 103rd Precinct, including the 103rd Detective Squad; and (3) prepare or direct the preparation of a Complaint Report for said reported alleged crime.

P.G. 202-14,¹ Pages 1, 4, 5 & 6,
Paragraphs 3, 33, 49, & 60

DESK OFFICER
DUTIES AND RESPONSIBILITIES

P.G. 207-21, Page 3, Paragraph 1

COMPLAINT REPORTING
SYSTEM

Case No. 2020-22790

1. Said Police Officer Domenick Lagomarsine, while on duty and assigned to the 103rd Precinct, on or about June 20, 2020, having responded to a report of a physical fight near 173rd Street and Jamaica Avenue, wrongfully failed to (1) conduct a preliminary investigation of the incident, including identifying and interviewing the 911 caller and other witnesses and utilizing translation services, if necessary; (2) inform the 103rd Precinct Patrol Supervisor and Platoon Commander of the actual facts of the incident; (3) prepared an Aided Report; and (4) make required entries in his Activity Log.

P.G. 202-21,² Pages 1 & 2,
Paragraphs 1, 5, 6, 8, & 17

POLICE OFFICER
DUTIES AND RESPONSIBILITIES

P.G. 212-08, Page 1, Paragraph 1

ACTIVITY LOGS
COMMAND OPERATIONS

P.G. 212-90

GUIDELINES FOR
INTERACTION WITH LIMITED
ENGLISH PROFICIENT PERSONS
COMMAND OPERATIONS

P.G. 216-01, Page 2, Paragraphs 8-11

AIDED CASES

¹ Now P.G. 202-18.

² Now P.G. 202-21.

GENERAL PROCEDURE

P.G. 216-02, Pages 1 & 2

PREPARATION OF AIDED
REPORT

P.G. 202-23,³ Page 1, Paragraph 5

RADIO MOTOR PATROL
RECORDER
DUTIES AND RESPONSIBILITIES

P.G. 202-22, Page 2, Paragraph 20

2. Said Police Officer Domenick Lagomarsine, while on duty and assigned to the 103rd Precinct, on or about June 20, 2020, having responded to a report of a physical fight near 173rd Street and Jamaica Avenue, wrongfully failed to prepare a Complaint Report, as required.

P.G. 207-01, Page 3, Paragraph 1

COMPLAINT REPORTING
SYSTEM

3. Said Police Officer Domenick Lagomarsine, while on duty and assigned to the 103rd Precinct, on or about June 20, 2020, having responded to a report of a physical fight near 173rd Street and Jamaica Avenue, wrongfully de-activated his Department-issued Body-Worn Camera prior to the conclusion of the assignment.

P.G. 212-123, Pages 1 & 2, Paragraphs 4-8

USE OF BODY-WORN CAMERAS
COMMAND OPERATIONS

4. Said Police Officer Domenick Lagomarsine, while on duty and assigned to the 103rd Precinct, on or about June 20, 2020, having responded to a report of a physical fight near 173rd Street and Jamaica Avenue, wrongfully cancelled the response of the 103rd Precinct Patrol Supervisor by improperly dispositioning or causing the dispositioning of the assignment from that of a fight (10-39) to that of an intoxicated person (10-54).

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

³ Now P.G. 202-02.

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on August 11, 2022. Respondents, through their counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal recommends Respondent Lagomarsine forfeit 35 vacation days, and Respondent Torres forfeit 30 vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

On the evening of June 20, 2020, at approximately 11:40pm, Respondent Lagomarsine and his partner,⁴ along with several other officers, responded to a call of a fight in progress ("10-39") at the intersection of 173rd Street and Jamaica Avenue. Upon arrival, EMS were already on scene treating the victim. A crowd was gathered. Several individuals in the crowd, speaking Spanish and pointing, attempted to alert officers to an individual among those in the crowd, who Respondent described as a shirtless intoxicated male. Respondent Lagomarsine, believing the job to only involve "an aided and an intox," radioed central, changing the disposition from a "39" to a "54," indicating that there was no fight, but rather an individual in need of medical assistance. He then turned off his body-worn camera. He claimed that after turning off his camera he was told that the victim fell, causing him to assume the fall caused the victim's injuries. Respondent Lagomarsine and his partner subsequently left the scene. Respondent failed to complete an Aided Report and further failed to make any entries in his Activity Log.

⁴ Respondent's partner, Police Officer Nicholas Catone, retired from the Department prior to his scheduled disciplinary hearing.

On June 22, 2020, the victim's son and daughter, traveled to the 103rd Precinct to seek information. Respondent Torres spoke to them, primarily speaking with the daughter. When they described an assault and gave him their father's name, Respondent Torres informed them his command had no incident on record with that name. It was unclear if the victim's family members provided a location to Respondent Torres. The daughter explained that she was a nurse and knew her father had been assaulted based on his injuries. She further informed him that there was video of the assault. Respondent instructed them to determine the location of the video and he would send officers to view it. He admitted that the daughter became upset that he would not take a report, leaving the precinct with her brother.

The victim subsequently died from his injuries. A follow-up investigation revealed that the victim had been assaulted by an individual that was on scene when Police Officer Lagomarsine responded. Members of the Department arrested the perpetrator five days later.

Respondent Lagomarsine's testimony:

At his mitigation hearing, Respondent Lagomarsine testified that the intersection of 173rd Street and Jamaica Avenue, which has a deli/restaurant that serves alcohol at night and nearby bars, is commonly associated with drug use and intoxicated individuals (Tr. 56).

Upon arriving on the scene, Respondent Lagomarsine witnessed a large group of approximately 15 to 20 people standing on the corner. He was initially surprised by the presence of an ambulance (Tr. 36-37, 47). After exiting his vehicle, Respondent Lagomarsine noticed a man (later identified as the victim) lying on a stretcher receiving medical attention by EMS. According to Respondent Lagomarsine, the victim was not bleeding and did not appear to have any visible injuries. He also noticed a second male, shirtless and intoxicated, who was attempting to intervene to help the victim despite EMS asking him to move away (Tr. 38-39).

Respondent Lagomarsine testified that the crowd was speaking Spanish. He noted he does not speak Spanish. When they arrived at the scene, some people were pointing towards the victim and the shirtless man, but he could not understand what they were yelling in Spanish (Dept. Ex 1 at 00:23-00:45). He failed to utilize the Department's translation service. After the shirtless man was moved and EMS was able to complete their work, Respondent Lagomarsine stated the crowd quieted, leading him to believe the crowd had been trying to stop the shirtless man from interfering with the medical care (Tr. 39-40, 43).

Once he was able to assess the situation as involving nothing more than "an aided and an intoxic," he changed the job to an "aided person with an ambulance on scene." Believing that a police response was no longer required, he turned off his body worn camera (Tr. 40). On cross examination, he testified that it was not until after changing the disposition of the job and turning off his body worn that he spoke with an English-speaking individual who informed him that the victim fell (Tr. 46, 53-54). He further claimed to have spoken to EMS, who told him that they had responded to a report of an intoxicated male who fell with unknown injuries. His observations did not lead him to believe anything different had occurred (Tr. 53).

After changing the disposition of the callout, he and his partner decided to respond, as backup officers, to a call of a house fire where a man was shot inside the home, and left the scene (Tr. 41-42, 53, 56).

Respondent Lagomarsine testified that he has learned from the incident and will be more diligent in the future regarding keeping his body worn camera turned on. He further acknowledged the importance of requesting a translator as it could have led to pertinent information and an arrest. He further testified that he will be more diligent in identifying 911 callers as part of conducting more thorough on-scene investigations. He explained that he and his

partner failed to complete an aided report that night because it “slipped our mind and we forgot with the busyness of the night,” but admitted that he and his partner should have completed one. (Tr. 42-43)

Lieutenant Torres’ testimony:

Respondent Torres testified in mitigation that due to Covid-19 and active protests, security protocols required officers outside the stationhouse to enforce limits on the number of civilians who could enter the vestibule area of the precinct. As much as possible, officers would try to meet people outside the command and only escort them inside if necessary. (Tr. 61-63, 80-81)

While manning the front desk of his command on June 22, 2020, one of the officers working security requested he speak with a civilian outside.⁵ The female identified herself as the victim’s daughter and was with her brother. She stated the victim is in critical condition at the hospital as a result of an assault. Respondent Torres testified that he asked the victim’s daughter if she witnessed the assault. She replied that she had not. She explained that she is a nurse and told him that based on her experience she knew her father had been assaulted (Tr. 63-64, 67-68).

After speaking with the daughter, Respondent Torres was able to determine that the event happened two days prior. He went back to the precinct and searched the victim’s name to see if any reports had been filed under the name that had been provided to him. No incidents were returned. Following his findings, he reported to the daughter that no reports had been filed. Respondent Torres remembers that she became upset on hearing this news, accusing Respondent Torres of refusing to take a report. (Tr. 64-65; Dept. Ex 2 at 6:00)

⁵ Respondent Torres’s interaction with the victim’s daughter is captured on a stationhouse surveillance camera inside the vestibule area of the command. The video does not have sound.

At that point, the daughter informed Respondent Torres that there is video of the assault, indicating that her brother knew how to locate it, but that they were unable to get it at that moment. Respondent Torres believed that until he saw the video he did have enough information to prepare a complaint report. Accordingly, he instructed her that if they found the video he would send officers to view it. (Tr. 69-71).

A few days later, the brother called the precinct to speak to Respondent Torres. Respondent Torres indicated the phone call was brief and the brother incessantly asked why he did not take a report. Respondent Torres explained how he did not have enough information to take a full report and the conversation ended (Tr. 95-96).

At trial, Respondent Torres stated that he now understands that, at a minimum, a complaint report should have been completed. He indicated he could have taken a report for an “investigative aided” saying that something “could have” or “might have” happened and brought it to the detective squad. He testified that he has since had a similar situation happen to him and dutifully completed all the proper steps (Tr. 72, 97-98).

PENALTY

In order to determine appropriate penalties, this Tribunal, guided by the Department’s Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondents’ respective employment histories were also examined. *See* 38 RCNY § 15-07. Information from Respondents’ personnel records that was considered in making this penalty recommendation is contained in attached memoranda.

Penalty Recommendation for Respondent Lagomarsine

Respondent Lagomarsine, who was appointed to the Department on January 10, 2007, has plead guilty to each of the four specifications with which he is charged. The Department Advocate has recommended an aggravated penalty of 43 vacation days and one year Dismissal Probation.

The Tribunal does not agree that the facts and circumstances of the instant case warrant the application of Dismissal Probation. Respondent has no prior formal disciplinary history. While the Department, in closing, described Respondent Lagomarsine's culpable mental state as involving "exceedingly poor judgment," and the Tribunal does not disagree with this assessment, such factors may be addressed by an adequate forfeiture of penalty days. Dismissal Probation, on the other hand, should be reserved for termination-level misconduct, officers with recent or related prior disciplinary history, or under circumstances in which there is reason to believe the conduct is likely to occur again such that the threat of summary dismissal is deemed required.⁶ Here, the Tribunal is satisfied by Respondent's testimony, and his corresponding guilty plea, that he understood his conduct to be wrongful and demonstrated that it was unlikely to occur again by adequately explaining the reasons why his performance was deficient.

Nevertheless, Respondent is deserving of a substantial penalty. The Tribunal does not credit Respondent's position that he and his partner are guilty of little more than rushing their

⁶ Even when penalties have been aggravated in similar cases, Dismissal Probation has not been added (*see, e.g., Disciplinary Case Nos. 2018-18538 & 18539* [Mar. 16, 2022] [Forfeiture of 30 vacation days for failing to conduct a proper investigation and make an arrest in a must-arrest situation given a full stay away order of protection. Police Commissioner aggravated the penalty because the failures were found to set in motion a chain of events that ended in the unsolved murder of the perpetrator.]; *Disciplinary Case No. 2018-19221* [Mar. 31, 2020] [Forfeiture of 33 suspension days without pay for failing to conduct a proper field investigation upon responding to a "10-10" (call for help), failing to exit their RMP despite the 911 caller saying that she still heard the individual, finalizing the assignment as "10-90Y" (unnecessary), and returning to the precinct. Two hours later, another unit responded to the same location and found a deceased male, who had been shot in the abdomen. There was no evidence, however, that the subject officers' actions caused the death of the individual.]])

response to this job based on an assumption that all they had was a “10-54” in order to report to a higher priority job. Rather, it is likely, based on the preponderance of the evidence, that Respondent and his partner willfully refused efforts of the members of the public at the scene to communicate with him and tell him what had occurred. Upon arriving at the scene, multiple members of the public pointed their fingers at a shirtless man intervening in the provision of medical care to the victim. These members of the public made multiple attempts to communicate with the officers. Ignoring their requests, Respondent changed the disposition of the job and less than two minutes after exiting his patrol vehicle discontinued his body worn camera recording.

Respondent’s testimony that these individuals spoke Spanish and he did not (Tr. 39-40) is not an excuse that is acceptable to the Department. A central tenet of the police service of the City of New York is to serve the plethora of diverse communities across its five boroughs. This service, by necessity, includes the large number of City residents who do not speak English as a first language. Officers are trained to access telephonic and video translation services, capable of translating over 100 languages, via their Department-issued cellphones.⁷ Here, Respondent knowing that members of the public were requesting police assistance and attempting to communicate with him, willfully failed to provide the essential service of translation in order to understand them. Under the circumstances of the instant disciplinary matter, this dereliction of duty, constituting a denial of an essential police service, warrants the imposition of a substantial penalty.

Pursuant to the Disciplinary Guidelines the presumptive penalties applicable to the charged misconduct are as follows: (1) failure to take police action (e.g. conduct a proper

⁷ New York City Local Law 30, effective July 1, 2017, mandated that language access services be provided across all city agencies, so that Limited English Proficient (LEP) individuals are able to access City services and interact with government agencies.

investigation) – 20 penalty days, (2) failure to prepare a required report – 5 penalty days, (3) terminating a body worn camera recording of a subject event at an improper time – 3 penalty days. The Tribunal finds that the improper dispositioning of the assignment charged in Specification 4 is subsumed by the penalty recommendation attendant to Respondent's failure to conduct a proper investigation. The Tribunal further finds that the willful failure to provide translation services to members of the public in this matter justifies an enhanced penalty.

Accordingly, the Tribunal recommends that Respondent Lagomarsine forfeit 35 penalty days in connection with Disciplinary Case No. 2020-22790.

Penalty Recommendation for Respondent Torres

Respondent Torres, who was appointed to the Department on April 15, 1997, has pleaded guilty to the subject charges. The Department Advocate has recommended an aggravated penalty of 40 vacation days and one year dismissal probation.

The Tribunal similarly finds that the facts and circumstances accompanying Respondent Torres's disciplinary matter do not warrant the application of Dismissal Probation. Respondent has no prior disciplinary history, has never been placed on monitoring, and has received impressively high evaluations over the course of his long career. The Tribunal further credited Respondent Torres's testimony at trial as direct and honest, admitting his misconduct and testifying that he has learned from his mistakes and has endeavored to ensure that they are not repeated.

Nevertheless, Respondent Torres is deserving of an enhanced penalty. Respondent twice refused to prepare a required report: first when the daughter demanded that he do so, and second, when the brother called him to demand the same. Respondent is further deserving of an enhanced penalty based upon his supervisory status.

Pursuant to the Disciplinary Guidelines the presumptive penalties applicable to the charged misconduct are as follows: (1) failure to take police action (e.g. direct a proper investigation and make required notifications) – 20 penalty days, (2) failure to prepare a required report – 5 penalty days.

Accordingly, the Tribunal recommends that Respondent Torres forfeit 30 penalty days in connection with Disciplinary Case No. 2020-22788.

Respectfully submitted,

JOSH KLEIMAN Bx PMG

Josh Kleiman,
Assistant Deputy Commissioner Trials

APPROVED

[Signature]
DEC 29 2022
KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
LIEUTENANT RICHARD TORRES
TAX REGISTRY NO. 919786
DISCIPLINARY CASE NO. 2020-22788

Respondent was appointed to the Department on April 15, 1997. On his three most recent annual performance evaluations, he received 4.5 overall ratings of “Highly Competent/Extremely Competent” in 2019, 2020, and 2021. He has been awarded one medal for Exceptional Merit, five medals for Meritorious Police Duty, and four medals for Excellent Police Duty.

Respondent has no disciplinary history.

For your consideration.

JOSH KLEIMAN BY PMG

Josh Kleiman
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER DOMENICK LAGOMARSINE
TAX REGISTRY NO. 943457
DISCIPLINARY CASE NO. 2020-22790

Respondent was appointed to the Department on January 10, 2007. On his three most recent annual performance evaluations, he was rated as “Exceptional” for 2020 and 2021, and “Exceeds Expectations” for 2019. He has been awarded one Commendation, nine medals for Meritorious Police Duty, and four medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Josh Kleiman BY PMG

Josh Kleiman
Assistant Deputy Commissioner Trials